NO. 2791

United States
Circuit Court of Appeals
For the Ninth Circuit

THE EQUITABLE TRUST COMPANY OF NEW YORK, as sole TRUSTEE under a Deed of Trust made by the Great Shoshone and Twin Falls Water Power Company, dated May 1, 1910, and Supplemental Mortgages dated June 21, 1911, and April 7, 1913,
Appellant,

vs.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation, WILLIAM T. WALLACE as Receiver of Great Shoshone and Twin Falls Water Power Company, GUY I. TOWLE, and CARL J. HAHN, as Administrator of the Estate of Harry M. King, deceased, Defendants, and L. M. PLUMMER and E. B. SCULL, Executors of the Estate of L. L. McClelland, deceased, JAKE M. SHANK, and AMERICAN WATER WORKS AND ELECTRIC COMPANY, a corporation, interveners.
Appellees.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, a corporation, intervener,
Appellant,

vs.

GUY I. TOWLE, CARL J. HAHN, as Administrator of the Estate of Harry M. King, deceased, GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation, and WILLIAM T. WALLACE, as Receiver of Great Shoshone and Twin Falls Water Power Company, Defendants, L. M. PLUMMER and E. B. SCULL, Executors of the Estate of L. L. McClelland, deceased, and JAKE M. SHANK, interveners, and THE EQUITABLE TRUST COMPANY OF NEW YORK, as sole Trustee under a Deed of Trust made by the Great Shoshone and Twin Falls Water Power Company, dated May 1, 1910, and Supplemental Mortgages dated June 21, 1911, and April 7, 1913,
Appellees.

REPLY BRIEF OF APPELLEE

CARL J. HAHN, ADMINISTRATOR OF HARRY M. KING TO BRIEF OF EQUITABLE TRUST CO., TRUSTEE, APPELLANT

Upon Appeal From the United States District Court for the District of Idaho, Southern District.

JAMES H. WISE
Residence: Twin Falls, Idaho,
Solicitor for Carl J. Hahn, Administrator of Harry M. King.

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terest on said mortgage and bond to the Equitable Trust Company of New York, but permitted said company to continue in operation and possession of the property by and through a receiver (95).

On April 14, 1915, the Equitable Trust Company of New York started a foreclosure proceedings on the bond issue heretofore mentioned and set out (7 and 78). This appellee was made one of the parties defendant in said cause of action, and filed his answer May 15, 1915 (88 to 101, inclusive).

Said cause of action was tried in the United States District Court of Idaho, and decree of foreclosure entered on the 6th day of December, 1915 (189-210). The property was sold January 8, 1916 (214-215). In the decree of foreclosure the claim of Carl J. Hahn, administrator of the estate of Harry M. King, deceased, appellee was allowed as a preference right for the sum of $6,225.15 (192).

The court ordered the special master appointed in the foreclosure suit to pay the full claim of said Carl J. Hahn (224-227) for $6,225.15 and interest (242).

ARGUMENT

The judgment, dated September 23, 1914, of Hahn for $5,590.00, and costs of $174.35 (101), was a lien upon the real, personal and mixed properties of the Great Shoshone & Twin Falls Water Power Company, prior to the appointment of the receiver on November 2, 1914 (170).

Section 15, Article II, Constitution of Idaho.
Section 4462 Revised Statutes of Idaho, 1908.

Seymour vs. Boise R. Co., 24 Idaho 7; 132 Pac. 427.

This appellee was prohibited from enforcing his lien and judgment dated September 23, 1914, by the appointment of a receiver on November 2, 1915. The appellee, however, is protected in his lien, constitutional right or constitutional inhibition by the constitution of the State of Idaho. Section 15, Article 11, constitution of the State of Idaho, Revised Statutes of Idaho, 1908, page 122, provides as follows:

> "The legislature shall not pass any law, permitting the leasing or alienation of any franchise, so as to release or relieve the franchise, or property held thereunder, from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges."

It might be well at this time to pay some attention to the meaning of the word "alienate." "Alienate" means to convey or to transfer the title to property (Black's Law Dictionary). This is a general ordinary accepted term of the word "alienate," as provided in the foregoing provisions of the Idaho Constitution. It will be noticed that in these definitions the word "conveyance" is used, and the legislature of the State of Idaho has seen fit to define the word "conveyance" in so far as it applies to property in the State of Idaho.

Section 3161, Revised Statutes of Idaho, provides as follows:

> "The term 'conveyance' as used in this Chapter

> embraces every instrument in writing by which any estate or interest in real property is created, alienated, mortgaged, or encumbered, or by which the title to any real property may be affected, except wills."

It will be noted from the reading of this Section of the Idaho Statutes, that the words "alienate" and "conveyance" are synonymous terms.

The right in the statute that a corporation may use, rent, or sell the same, includes the power to mortgage it. A mortgage is in effect a sale with the power of defeasance, which may ultimately end in the absolute transfer of title.

> Willamette Woolen Manufacturing Co. vs. Bank of British Columbia, 119 U. S., 198; 30 L. Ed. 387.

In a mortgage the legal ownership is vested in a creditor, but in equity the mortgagor remains the actual owner until he is barred by his own default or by judicial decree.

> Cowles vs. Diketson, 140 Mass. 376.
> Anderson Law Dictionary, Page 688.

The word "alienate" extends not only to alienation of lands by deed, but also to alienations in law, and transfer of title by devise, descent, or levy would be as technically an alienation as a transfer by deed.

> Lane vs. Mutual Fire Insurance Co., 12 Me., 44; 28 Am. Dec. 150.

A voluntary petition in bankruptcy constitutes an alienation.

> Cotgraves, 2 Chapter, England, 795.
> In re: Amherst, L. R., 13 Equity, England, 464.

A confession of judgment and sale, by the sheriff in pursuance of that judgment, is an alienation.

Stansbury vs. Patton Cloth Manufacturing Co., 5 N. J. Law, 505.

In this case, the court said:

"A confession of judgment, and the sale by the sheriff, in pursuance of that judgment, is in the strictest sense an alienation and is wholly immaterial whether one actually makes the conveyance himself, or constitutes an agent, or trustee to make it for him, or in order to render the transaction sale more solemn, go into a court of justice and by certain forms of procedure, procure it to be made by an officer of the law."

Mt. Vernon Mfg. Co. vs. Summit County Mutual Fire Insurance Company, 10 Ohio St., 348.
Eldridge vs. Okmulgee L. & T. Co., 90 Pac. 930.
Sharp vs. Lancaster, 100 Pac. 179.

Mortgages of land are conveyances within the meaning of Sec. 3161 of the Revised Statutes of Idaho, and Section 1215, Vol. I of Kerr's Civil Code of the State of California.

Carl vs. Hastings, 3 Cal., 179.
Tolman vs. Smith, 74 Cal., 345-349; 16 Pac. 189.
In re: Estate McConnell, 74 Cal., 217-218; 15 Pac. 746.
Hassey vs. Wilke, 55 Cal., 525-528.
Odd Fellows Savings Bank vs. Banton, 46 Cal., 603-607.

Sec. 3388 of the Revised Statutes of Idaho defines mortgages as follows:

"A mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession."

Brown vs. Bryan 6, Ida., 15.
Hanna vs. Vensel, 19 Ida., 803.

So in the case at bar, the alienation became complete, upon the sale of the property on the 8th day of January, 1916 (214-215).

At this time we desire to call the court's attention to that part of this constitutional provision of Idaho, or the words: "Contracted or incurred in the operation, use or enjoyment of said franchise, or any of its privileges." The courts of Idaho have construed this part of the constitutional provision, and have said:

> "A judgment obtained for personal injuries by a corporation in operating its street cars, is a liability contracted or incurred in the operation, use or enjoyment of the franchise of such corporation, within the meaning of Section 15, Article 11 of the State constitution, and becomes a claim against the franchise and property of such corporation in the hands of a purchaser or grantee of the franchise and property held thereunder."

It was the intention of the framers of the constitution to make these pre-existing liabilities preferred claims against the franchise and property transferred.

Seymour vs. Boise Railroad Company, 24 Ida., 7-16; 132 Pac. 427.
Cooper vs. Utah Light & Power Company, 35 Utah, 570; 135 Am. St. 1075; 102 Pac. 202.
Lee vs. Southern Pacific Railway Company, 116 Cal., 97; 58 Am. St. 140; 47 Pac., 932; 38 L. R. A. 71.
City of South Pasadena vs. Pasadena Land & Water Co., 152 Cal., 579; 93 Pac., 490.
Northern Pac. Railroad Co. vs. Boyd, 228 U. S. 482; 57 L. Ed. 931.
Penn. S. Co. vs. N. Y. City R. Co., 208 Fed. 168.

This construction makes it plain that neither the franchise nor the corporeal property therewith can be so alienated as to relieve them from liabilities incurred in their operation, use and enjoyment.

In Penn. S. Co. vs. N. Y. City R. Co., 208 Fed. 168, and on page 184 in relation to tort claims, the court use the following language:

> "The next claims are those for tort. That is, from damages resulting to individuals from the operation of the road before receivership. It is contended that because such damages are the usual and natural results of running a railroad they are considered as much an operating expense as are the various materials and supplies used in such operation. The question of priority in payment of tort claims of this sort has been frequently before the courts. The decisions clearly indicate that they rank with general unsecured claims. It may be that in some cases shocking injustice would result from those classifying them and a court of equity might be inclined to extend the rule as to the operating supply claims, so as to cover them."

At this point, however, I wish to say, that all the decisions of the Supreme Court, holding that they rank with general unsecured claims, are under statutes which have no such provisions as the constitution of the State of Idaho, and therefore, such decisions are not applicable in the case at bar.

The mortgage given by the Great Shoshone & Twin Falls Water Power Company covers the income of such company. At the same time the privilege of using that income until possession was delivered to the mortgagee, and all the operating expenses were to be paid out of the net in-

come of the Great Shoshone & Twin Falls Water Power Company during its possession and control of the same (47-49).

In the case of Fosdick vs. Schawl, 99 U. S., 235, 25 L. Ed., 339, and at the foot of pages 342-343, the Court uses the following language:

> "For even though the mortgage may in its terms give a lien upon the profits and income until possession of the mortgaged premises is actually taken, or something equivalently done, the whole of the earnings belong to the company and are subject to its control * * *"

The mortgagee has his strict rights, which he may enforce in the ordinary way. If he asks no favors he need grant none, but if he calls upon a court of chancery to put forth its extraordinary powers and grant him purely equitable relief, he may with propriety be required to submit to the operation of a rule which always applies in such cases, and do equity in order to get equity. The appointment of a receiver is not a matter of strict right. Such an application always calls for the exercise of judicial discretion, and the chancellor should so mold his order that while favoring one, injustice is not done to another. If this cannot be accomplished the application should ordinarily be denied.

No fixed and flexible rule can be laid down for the government of the courts in all cases. Each case will necessarily have its own peculiarities, which must to a greater or less extent influence the chancellor when he comes to act.

The foregoing case seems never to have been questioned,

and seems to be the basis of equitable rule. That each case most largely depends upon its own equities. Practically all of the cases reached back to this case of Fosdick vs. Schall for the principle, but the tendency seems to be to extend this rule to meet the needs of the modern conditions in the wonderful exposition of industrial and transportation influences of human affairs. This more fully appears from the dissenting opinion of Judge Caldwell in Illinois Trust & Savings Bank vs. Dowd, 105 Fed., 123, and the language of Judge Caldwell is pertinent at this time, for the reason that he was speaking that the doctrine was not based upon written law. We quote:

"It is difficult to harmonize all the judicial utterances and conclusions in the different cases that have been considered by the courts, but this is not surprising when we reflect that the whole doctrine is of modern origin, and that it is not based on written law, but upon equitable considerations, the application of which in a large degree, upon the sound judicial discretion of the chancellor having due regard to the circumstances of the particular case."

The case at bar is based upon constitutional provision and judicial decisions of Idaho as well as the equitable doctrine. Sec. 15, Article 11, Constitution of Idaho.

Seymore vs. Boise Railroad Co., 24 Ida., 7; 132 Pac. 427.
Lee vs. Southern Pacific Railroad Co., 47 Pac. 932.
Cooper vs. Utah Light & Railway Co., 102 Pac., 202, 207.

It appears from the cases, that the court may include in its order, appointing a receiver, the right to pay these pref-

erential claims, but this does not seem to be necessary, as shown in Farmers Loan & Trust Company vs. Kansas City, 53 Federal, 189.

In Galveston vs. Cowdry, 78 U. S., 459; 20 L. Ed. 199, 207, the court holds: That no demand was made for possession other than bringing the bill of foreclosure, and that that was not a demand for possession, and the income need not be accounted for to the mortgagee.

Gillman vs. Coicondall, 95 U. S., 603; 23 L. Ed. 405-410.
The American Bridge Co. vs. Cortright, 94 U. S., 798; 24 Law Ed. 144.

In case of Green vs. Coast Line Railroad Company, 33 L. R. A., 806, is a case quite fully discussed in this question and we call the court's attention to the following quotation from the syllabus:

"By invoking equitable relief, such as the appointment of a receiver, and the administration of the mortgaged property, by equitable means, and agencies, mortgagees submit themselves to do equity relatively to any creditor of the mortgagor, who may rightly intervene in a foreclosure proceedings in which such relief is sought. Mortgages upon a railway, and the income from the same, the mortgagor being left in possession, or as to the income whether produced before or after the appointment of a receiver in foreclosure proceedings subject to be postponed in equity in favor of a claim for damages, resulting from a tort committed by the mortgagor while, and by reason of, operating the railway after the execution of the mortgage.

Hale vs. Frost, 99 U. S., 389; 25 L. Ed. 419.
Farmers Loan & Trust Company vs. Northern Pac. Railway Company, 71 Fed., 245.

And on page 247, the Court states:

> "There can be no reason or just ground for discriminating by allowing one class of current expenses, as for expenses, wages, or money due, to connecting line, for any change of traffic to be paid and refusing payment for any other expense, unavoidably incurred in the operation of the railroad, as for instance, a judgment for personal injury to a passenger or employee, or for damages to merchandise in transit."

In the light of the foregoing rules, and in the light of the constitution and decisions of the State of Idaho, and in the light of the conditions of this case, and circumstances surrounding it, the equity should appeal strongly to this court.

A court will appoint a receiver to do what, if a receiver should not be appointed, the company itself ought to do. Every mortgagee in accepting his security impliedly agrees that the current debts and operating expenses made in the ordinary course of business shall be paid, from the current receipts before he has any claim upon the income. The whole earnings belong to the company and are subject to its control.

Fosdick vs. Schawl, 99 U. S., 235-252-253.
Lucy Green vs. Coast Line Railway Co., 33 L. R. A. 806.
Southern Railway Company vs. Carnegie Steel Co., 176 U. S., 257; 44 L. Ed., 458.

Operating expenses, no matter when accruing, may be allowed out of the earnings of the company during the

time of the receivership, and may be allowed out of the corpus of the company.

> Southern Railway Company vs. Carnegie Steel Co., 176 U. S., 251; 44 L. Ed. 458.
> Finance Company vs. Charleston, 51 Fed., 369.

A claim for death or personal injury in Idaho is an operating expense.

> Seymour vs. Boise Railway Co., 24 Idaho, 7.; 132 Pac., 427; 132 Pac. 427.

The State of Idaho having provided by constitutional provision and decisions of its courts, the operating expense of a corporation, the same becomes the law in federal courts, and when the United States courts find principles distinctly settled by constitution and statutes, and adjudications, they have no more right to question them, or deviate from them, than could be correctly exercised by their own tribunals.

> Livingstone vs. Moore, 7 Pet., 469-451; 8 Law Ed., 751.
> Robertson vs. Campbell, 3 Wheat, 212-221; 4 Law Ed., 471.
> United States vs. Thompson, 98 U. S., 486; 490; 25 Law Ed., 194.
> Baltimore Railroad Company vs. Joy, 173 U. S., 226-230; 43 Law Ed., 677.
> Bucher vs. Cheshire Railroad Co., 125 U. S., 555-582; 31 Law Ed., 795.
> Balkan vs. Woodstock Iron Company, 154 U. S., 177-187; 30 Law Ed., 953.

As the law of the respective state courts, constitutions and statutes had been adopted in order to accomplish sub-

stantial justice, according to the peculiar and local circumstances of each state, and as the people were content under the operation under those municipal regulations, it was natural to presume that by the adoption, the same rule for federal courts, the same salutary effect would be produced.

Brown vs. Van Braam, 3 Dall., 344; 1st Law Ed 629;
McNeil vs. Holbrook, 12 Pet., 84; 9 L. Ed., 1009.

Where a course of decisions, whether founded upon statute, or not, have become rules of property as laid down by the highest courts of the state, they are to be treated as laws of the state by the Federal Court, and are binding on the Federal Court.

Bucher vs. Cheshire Railroad Company, 125 U. S., 555; 31 Law Ed., 795.
Alcott vs. Bynum, 17 Wahl, 44; 21 Law Ed., 570.
Burges vs. Seligman, 175 U. S., 20; 27 L. Ed. 359.
Baltimore Railroad Company vs. Baugh, 149 U S., 368; 37 Law Ed., 772.
Bacon vs. N. W. Railroad Company, 131 U. S., 258; 33 L. Ed., 128.

Upon the construction of the constitution of the State, the Federal courts as a general rule follow the decision of the highest courts of the state.

Supreme Lodge, Knights of Pythias, vs. Mayer, 198 U. S., 508; 49 L. Ed., 1146.
Bacon vs. Texas, 163 U. S., 207-221; 41 L. Ed. 132.
Hammond vs. Hastings, 134 U. S., 401.
Stettsman County vs. Wallace, 142 U. S., 293-306, 35 Law Ed. 1018.
First National Bank vs. Ayres, 160 U. S., 660-664, 40 L. Ed., 573.

Taylor vs. Beckman, 178 U. S., 548; 33 L. Ed. 909.
Forsyth vs. Hammond, 166 U. S., 506-518; 41 L. Ed. 1095.
O'Connor vs. Texas, 202 U. S., 501-509; 50 L. Ed., 1120.
Lambert vs. Barrett, 159 U. S. 660; 40 L. Ed. 296.
Shoshone Mining Company vs. Rutter, 177 U. S. 505-508; 44 Law Ed. 864.

When the construction of the constitution, or the statutes of a state has been fixed by the decision of the highest court of the state, the courts of the United States accept and apply it in cases before them.

Elwood vs. Marcey, 92 U. S., 289; 23 L. Ed., 710.

The federal courts respect the decisions of the state courts upon their constitution and statutes in the same manner as the state courts are bound by the decisions of the federal courts in construing the constitution, laws and treaties of the union.

Elmendorf vs. Taylor, 10 Wheat, 152; 6 L. Ed., 289.
Smiley vs. Kansas, 196 U. S., 447-455; 49 L. Ed., 546.

When a case is brought from the state courts in the United States Court, comity generally requires of the United States Court that in matters relating to proper construction of the laws and of its own states, the United States Court should follow the decision of the state court, and if a statute as construed by the state court is constitutional, the federal courts will follow its construction.

Soper vs. Lawrence, 201 U. S., 359-370; 50 L. Ed., 788.

Tampa Water Works Company vs. Tampa, 199 U. S., 241; 50 Law Ed., 170.
Strickley vs. Highland Mining Company, 200 U. S., 527, 530.
Arcadia vs. State, 19 Wahl, 635; 22 Law Ed., 215.

And the federal courts will follow the construction of the constitution of the state given by the decision of the highest court, although the federal court may be of the opinion that the construction given by the state court is improper.

Forsyth vs. Hammond, 166 U. S., 506; 518; 41 L. Ed., 1095.
Iowa Central Railroad Company vs. Iowa, 160 U. S., 389; 40 L. Ed., 467.

It is immaterial whether such construction has been established by long usage or a judicial decision.

Carrol vs. Safford, 3 Howard, 441-4601 11 L. Ed. 671.

The construction given the statute or constitution of a state by the highest judicial tribunal of such state is regarded as a part of the statute, and is as binding upon the courts of the United States as the text.

Machine Company vs. Gage, 100 U. S., 676, 677; 25 L. Ed., 724.
Boserman vs. Blunt, 147 U. S., 647-654; 37 L. Ed., 316.
Bucher vs. Cheshire Railroad Co., 125 U. S., 555-582; 31 L. Ed., 795.
Morley vs. Lake Shore Railroad Company, 146 U. S., 162; 36 Law Ed., 925.
Fairfield vs. Gallatin County, 100 U. S., 47; 25 L. Ed., 544.

There is no sound distinction between the construction of a law enacted by the legislature of a state, and the construction of the organic law, ordained by the people themselves. The exposition of both belongs to the judicial department of the government of the state, and its decision is final and binding upon all the departments of that government and upon the people themselves, until they see fit to change their constitution; and the federal courts receive such a settled construction as a part of the fundamental law of the state.

Webster vs. Cooper, 14 How., 488; 504; 14 Law Ed., 510.
Meade vs. Portland, 200 U. S., 148; 50 L. Ed., 413.

As a matter of propriety and right the decision of the state courts, on the question as to what are the laws of the state, is binding upon those of the United States.

Aokes vs. Mose, 165 U. S., 363, 364; 41 L. Ed. 746.
Wilkes County vs. Coler, 180 U. S., 506-520; 45 L. Ed., 642.
Talton vs. Mays, 163 U. S. 376, 385; 41 L. Ed., 196.
Railway Company vs. Whitten, 13 Wahl, 270-271; 20 L. Ed., 571.
Minnesota Iron Co. vs. Kline, 199 U. S., 593, 597; 50 L. Ed., 322.

It will be seen by the decisions cited herein that the federal courts should follow the rule laid down by the constitution, statutes and decisions of the highest courts of the State of Idaho.

Appellee, Hahn, had a lien, constitutional right or constitutional inhibition on the real, personal and mixed prop-

erty of said company, by virtue of the nature of his claim, on May 6, 1913, at the time of the death, adjudicated, September 23, 1914, by the judgment at the time of appointing the receiver on November 2, 1914, by virtue of the constitutional statutes and judicial decisions of the State of Idaho. Sec. 15, Article 11, Constitution of Idaho; Sec. 4462, Revised Statutes of Idaho, 1908.

Seymour vs. Boise Railroad Company, 24 Ida., 7.

And it cannot be said under the rule laid down, that appellee Hahn did not have a first and prior lien on all real, personal and mixed property of the Power Company, and especially so upon the property not covered by the mortgage, admitted to be of the value of $45,000.00. Receivers only require possession of property subject to the existing liens, constitutional rights and constitutional inhibitions, and his possession or appointment does not devise a lien, constitutional right or constitutional inhibition previously acquired.

High on Receivers, 4 Ed., Sec. 138.
In re: Rogers, 125 Fed., 169.
Ryan vs. Rogers, 14 Ida., 309; L. C., 319; 94 Pac. 427.

The principal extends also to choses in action, which pass to the receiver by virtue of his appointment, and he takes them subject to existing liens thereon. For example: Where attorneys of a bank are employed to foreclose a mortgage and pending the foreclosure a receiver is appointed of the affairs of the bank, the receiver takes title to the mort-

gage, or its proceeds, subject to the lien which an attorney has for his fees, upon the papers of his client, as well as upon the proceeds of the litigation, and the attorneys will be required to pay to the receiver only the balance of the proceeds after deducting their fees.

High on Receivers, supra, 138.

Receivers' possession is possession of the party who is ultimately determined to be entitled to the property.

High, supra, 134-135.

LIENS

A lien is a charge imposed upon specific property. It may be created by contract of the parties by constitutional provision, by statute, or by operation of law.

Kreling vs. Kreling, 118 Cal., 413; 50 Pac., 546-548.
The Menominie, 36 Fed., 197-199.
United States Blowpipe Company vs. Spencer, 40 W. Va., 698; 21 S. E., 769-771.
Arnold vs. Porter, 122 N. C., 242; 29 S. E., 414-416.
Hines vs. Duncan, 79 Ala., 112-117; 58 Amer. Rep., 580.

A lien is a right of property and not a mere matter of procedure.

J. E. Rumbell, 13 Sup. Ct., 498-500; 148 U. S., 1; 37 L. Ed., 345.

It follows that the appellant Hahn, having a prior lien, constitutional right, or constitutional inhibition, on all the real, personal and mixed property of the Great Sho-

shone & Twin Falls Water Power Company, the judgment of the District Court should be affirmed, as to the appellee, Hahn.

Respectfully submitted,

JAMES H. WISE,

Solicitor for Appellee, C. J. Hahn, Administrator of the Estate of Harry M. King, deceased.

Residence and Office, Twin Falls, Idaho.